

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MICHAEL TIPTON

Claimant

VS.

DILLON COMPANIES, INC.

Respondent

Self-Insured

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Docket No. 208,410

ORDER

Claimant appeals from the February 21, 1997 Order of Administrative Law Judge Jon L. Frobish which authorized Kris Lewonowski, M.D., as the treating physician but denied claimant temporary total disability benefits.

ISSUES

- (1) Did claimant suffer an intervening injury to his low back which would preclude him from receiving workers compensation benefits?
- (2) Claimant's entitlement to temporary total disability compensation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire file, the Appeals Board, for preliminary hearing purposes, makes the following findings of fact and conclusions of law:

Claimant originally suffered accidental injury to his low back arising out of and in the course of his employment on October 23, 1995. This matter went to preliminary hearing in front of Administrative Law Judge Shannon S. Krysl on March 19, 1996 at which time Judge Krysl awarded claimant temporary total disability benefits beginning December 14, 1995, and further granted authorized medical treatment with

Stephen Ozanne, M.D. Claimant underwent back surgery on January 25, 1996 and was released by Dr. Ozanne on May 30, 1996, to return to work with limitations. Claimant continued treatment with Dr. Ozanne until such time as Dr. Ozanne moved to Texas and then in July 1996 was transferred to the care of Dr. Kris Lewonowski. In October 1996, claimant returned to Dr. Lewonowski describing discomfort in his lumbar spine and into the buttocks. Claimant alleged the need for ongoing medical care stemmed from the original injury in October 1995. Respondent, however, claimed claimant's current symptomatology stemmed from a horse riding incident which occurred in October 1996. Respondent claimed, at preliminary hearing, that this horse riding incident would be an intervening injury which would preclude claimant from receiving additional benefits for his low back at respondent's expense.

The Administrative Law Judge granted claimant ongoing medical benefits with Dr. Lewonowski but denied claimant's request for temporary total disability compensation.

The Appeals Board must first consider whether it has jurisdiction to consider this matter on appeal from a preliminary hearing. The consideration by the Appeals Board of the orders of administrative law judge's from preliminary hearings is limited. K.S.A. 44-534a allows review of disputed issues dealing with whether an employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made or whether certain defenses apply. These issues are all considered jurisdictional and subject to review by the Appeals Board. Reviews of preliminary hearing can also be conducted if it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at preliminary hearing. See K.S.A. 1995 Supp. 44-551(b).

Respondent's contention at preliminary hearing that claimant suffered an accidental injury while riding horses would normally be considered a question of whether claimant suffered accidental injury arising out of and in the course of his employment. Respondent does not raise this issue on appeal. It is, however, argued by claimant in his brief to the Appeals Board. The Administrative Law Judge apparently found that claimant's ongoing condition was related to the accidental injury of October 1995 as the Administrative Law Judge granted claimant ongoing medical benefits. The Appeals Board finds the convoluted and controversial testimony of the various witnesses regarding the horse riding incident to be insufficient to overcome claimant's testimony and claimant would be entitled to medical benefits. This issue was found in claimant's favor but still argued by claimant in his brief. It cannot be the basis for allowing jurisdiction by the Appeals Board regarding the issue of temporary total disability.

The Administrative Law Judge went on to deny claimant temporary total disability compensation even after finding claimant's need for medical care was related to his work-related injury. K.S.A. 44-534a grants an administrative law judge the jurisdiction to decide issues dealing with temporary total disability compensation and ongoing medical treatment. The Appeals Board finds the Administrative Law Judge, for whatever reason,

found claimant to not be entitled to temporary total disability compensation for this work-related injury. As it is within the administrative law judge's jurisdiction to decide issues dealing with temporary total disability compensation, this decision by the Administrative Law Judge would not be one over which the Appeals Board has jurisdiction from a preliminary hearing order. As such, the Appeals Board finds the appeal by claimant regarding the intervening injury to be moot, having been found in claimant's favor, and the appeal regarding claimant's entitlement to temporary total disability compensation should be, and is hereby dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Jon L. Frobish dated February 21, 1997, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 1997.

BOARD MEMBER

c: Michael L. Snider, Wichita, KS
Scott J. Mann, Hutchinson, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director